

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriella Carpenter	Team: Squad #13	CCRB Case #: 201704935	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/13/2017 7:00 PM	Location of Incident: Foster Avenue and East 40th Street	Precinct: 67	18 Mo. SOL 12/13/2018	EO SOL 12/13/2018	
Date/Time CV Reported Tue, 06/13/2017 9:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/19/2017 10:40 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM William Pugliese	12760	953278	067 PCT
2. POM Joseph Calabrese	10163	954588	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM William Pugliese	Abuse: PO William Pugliese stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Joseph Calabrese	Abuse: PO Joseph Calabrese stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM William Pugliese	Force: PO William Pugliese pointed his gun at § 87(2)(b)	
D.POM Joseph Calabrese	Force: PO Joseph Calabrese pointed his gun at § 87(2)(b)	
E.POM William Pugliese	Discourtesy: PO William Pugliese spoke discourteously to § 87(2)(b)	
F.POM Joseph Calabrese	Discourtesy: PO Joseph Calabrese spoke discourteously to § 87(2)(b)	
G.POM William Pugliese	Force: PO William Pugliese used physical force against § 87(2)(b)	
H.POM William Pugliese	Abuse: PO William Pugliese frisked § 87(2)(b)	
I.POM William Pugliese	Abuse: PO William Pugliese searched the vehicle in which § 87(2)(b) was an occupant.	
J.POM Joseph Calabrese	Abuse: PO Joseph Calabrese refused to provide his name and shield number to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed a complaint with the Internal Affairs Bureau on June 13, 2017, generating log number 17-22543. The complaint was received by the CCRB on June 19, 2017.

On June 13, 2017, at approximately 7:00 p.m., § 87(2)(b) was pulled over on Foster Avenue at East 40th Street in Brooklyn by Police Officer William Pugliese, Police Officer Joseph Calabrese, and another officer from the 67th Precinct (**Allegations A and B**). PO Pugliese and PO Calabrese approached the car with their guns pointed (**Allegations C and D**). PO Pugliese said, "Get the fuck out of the car, you got a fucking gun," PO Calabrese said, "Shut up, get the fuck out of the car" (**Allegations E and F**). PO Pugliese opened § 87(2)(b)'s door, grabbed his arm and the back of his neck, and pulled him out (**Allegation G**). When he was out of the car, PO Calabrese asked for § 87(2)(b)'s ID and registration and § 87(2)(b) said they were in his cup holder. PO Pugliese frisked § 87(2)(b) (**Allegation H**) and then PO Calabrese pushed § 87(2)(b) against the car, handcuffed him, and put him into the officers' car. PO Pugliese searched § 87(2)(b)'s glove compartment, center console, and trunk (**Allegation I**). When he was finished, § 87(2)(b) asked PO Pugliese, PO Calabrese, and another officer for their badge numbers but only PO Pugliese provided his information (**Allegation J**). § 87(2)(b) was allowed to leave without being summonsed or arrested. PO Pugliese filed a stop and frisk report regarding the incident.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)
- § 87(2)(b) rejected mediation as he wanted the officers to be disciplined.
- As of August 15, 2017, no notice of claim was filed in regard to this incident.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b)
- PO Pugliese has been a member of the service for five years and has had nine other CCRB allegations pled against him in five cases. § 87(2)(g)
§ 87(2)(b):
 - Two gun pointed allegations were pled against him, one in CCRB 201307237 that was unsubstantiated and one in CCRB 201601569 that was exonerated.
 - One vehicle stop allegation was pled against him in CCRB 201601569 that was unsubstantiated.
 - One vehicle search allegation was pled against him in CCRB 201601569 that was unsubstantiated.
 - One discourtesy (word) allegation was pled against him in CCRB 201601569 that was unsubstantiated.
- PO Calabrese has been a member of the service for four years and has had one other CCRB allegation pled against him in one case.

Findings and Recommendations

Allegation A: Abuse of Authority: PO William Pugliese stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B: Abuse of Authority: PO Joseph Calabrese stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(g)
§ 87(2)(b) testified that he left § 87(2)(b) in Brooklyn, his mother's apartment building, in the grey Toyota Camry he was renting with TLC license plates (BR 01, BR 02, and BR 15). § 87(2)(b) was alone and has short hair. After driving two or three blocks, he saw an unmarked grey or black Ford Taurus driving quickly behind him. The car turned on its police lights and siren and § 87(2)(b) immediately pulled over. Both § 87(2)(b) and the officers parked diagonally in the right lane with the back half of the cars in the street.

PO Pugliese testified that he and PO Calabrese received a radio run about a black male with a gun at § 87(2)(b) in Brooklyn (BR 03). The suspect was reported to have left § 87(2)(b) driving a light-colored sedan with TLC plates heading eastbound on § 87(2)(b). He could not recall hearing a description of the suspect's hair or whether the suspect was alone. About five to seven minutes after receiving the call, the officers saw a vehicle matching that description, a light blue or light grey sedan with TLC plates, about five blocks from § 87(2)(b) but they were not able to see the vehicle's occupants. After following the car for two or three minutes, PO Pugliese, who was driving, decided to pull the car over only because the car matched the description of the suspect's car and not for committing any traffic infractions. PO Pugliese and PO Calabrese did not really have any discussion before they stopped the car. PO Pugliese made the decision to stop the vehicle because it was the car most closely matching the description that came over the radio and it was the only car PO Pugliese saw in the area with TLC plates.

PO Calabrese corroborated PO Pugliese's testimony with the following distinction: The officers first saw § 87(2)(b)'s vehicle seven to ten minutes after receiving the initial call (BR 04).

Two men in § 87(2)(b) who called 911 in regard to the incident reported that a man with a gun was banging on the door to one of the apartments and trying to kick the door in (BR 12 and BR 13).

In the police radio communications regarding the event, the 911 dispatcher conveyed that the suspect was a black male with dreadlocks wearing a white t-shirt and blue jeans, and later that he got into a blue Toyota Camry with TLC license plates (BR 06 and BR 14). The dispatcher and officers stated that the suspect had dreadlocks three times and that he got into a blue car twice. No other color description for the vehicle was provided over the radio. The radio communications confirmed the officers' testimony regarding the time of the 911 call and the stop of § 87(2)(b).

An officer must have articulable reasonable suspicion to stop a vehicle. *People v. DeBour*, 40 N.Y. 2d 210, 223 (1976) (BR 05).

§ 87(2)(g)
§ 87(2)(b)

Though neither officer could see the occupants of § 87(2)(b)'s vehicle before stopping it, the officers consistently testified that his car closely matched the description of the vehicle that the suspect was driving. Though the color of § 87(2)(b)'s car did not match the car that the

suspect was seen entering, his proximity to the location where the 911 call originated, the closeness in time to the 911 call, § 87(2)(g) § 87(2)(b) § 87(2)(b)

Allegation C: Force: PO William Pugliese pointed his gun at § 87(2)(b)

Allegation D: Force: PO Joseph Calabrese pointed his gun at § 87(2)(b)

Allegation E: Discourtesy: PO William Pugliese spoke discourteously to § 87(2)(b)

Allegation F: Discourtesy: PO Joseph Calabrese spoke discourteously to § 87(2)(b)

Allegation G: Force: PO William Pugliese used physical force against § 87(2)(b)

Allegation H: Abuse of Authority: PO William Pugliese frisked § 87(2)(b)

§ 87(2)(g) § 87(2)(b) testified that PO Pugliese and another officer approached his driver's door and PO Calabrese (identified by description and actions) approached his passenger side door; PO Pugliese had his gun pointed toward § 87(2)(b) as he approached the car. PO Pugliese said, "Get the fuck out of the car, you got fucking a gun!" five or six times. § 87(2)(b) put his hands out of his open window so that PO Pugliese could see that they were empty, and said that he did not have a gun and would not get out of the car because they had the wrong person. PO Calabrese told § 87(2)(b) "Shut up, get the fuck out of the car," about two times. When § 87(2)(b) refused to get out, PO Calabrese opened § 87(2)(b)'s door, put his right hand behind § 87(2)(b)'s neck and his left hand on § 87(2)(b)'s left arm, and pulled § 87(2)(b) out. When he was out of the car, PO Calabrese asked § 87(2)(b) for his license and registration and § 87(2)(b) told him that they were in his cup holder. After § 87(2)(b) was out of the car, PO Pugliese put his gun away. PO Calabrese told § 87(2)(b) "If you don't shut the fuck up, I'm gonna put you in handcuffs" twice, then walked § 87(2)(b) to the back of the car. PO Calabrese continued holding § 87(2)(b)'s left arm and used his right hand to push § 87(2)(b)'s head against the car while he handcuffed him. PO Calabrese put § 87(2)(b) in the backseat of the police car without searching or frisking him.

PO Pugliese testified that he approached the driver's door and PO Calabrese approached the passenger side, both with their guns pointed at the car because they thought that someone in the car might be armed. PO Pugliese told § 87(2)(b) to show him his hands three or four times but § 87(2)(b) did not move except to look back at PO Pugliese; after PO Pugliese asked a few times, § 87(2)(b) raised his hands so that they were visible. The officers did not use any profanity before § 87(2)(b) stepped out of the car. Once § 87(2)(b) put his hands up, PO Pugliese holstered his gun, opened § 87(2)(b)'s door, grabbed § 87(2)(b)'s left wrist with one hand, and pulled him out of the vehicle without telling him to get out of the car for the officers' safety. PO Pugliese had not had time to look for signs of a weapon on § 87(2)(b) while he was in the car or after he pulled him out. PO Pugliese positioned § 87(2)(b) so that his stomach was pressed against the car and then frisked his waistband, groin, and lower back for weapons but did not find anything. PO Calabrese placed § 87(2)(b) in handcuffs and put him in the officers' car. The officers did not use any profanity after handcuffing him.

PO Calabrese corroborated PO Pugliese's testimony with the following distinctions: PO Calabrese approached § 87(2)(b)'s car with his gun pointed but he did not know whether PO Pugliese also had his gun pointed. § 87(2)(b) was loud and did not understand why he had been stopped so both officers explained about the radio transmission before he was removed from the car. While § 87(2)(b) was in the car, PO Calabrese did not see any bulges or indication that he

had a gun. PO Pugliese told § 87(2)(b) to step out of the vehicle but PO Calabrese could not recall whether PO Pugliese touched him or used force to get him out of the car.

PO Pugliese's memo book states that § 87(2)(b) was removed from the car and frisked due to the nature of the job (BR 07).

The stop and frisk report filed by PO Pugliese states that § 87(2)(b) was frisked as the officers were investigating a violent crime (BR 08).

Two men in § 87(2)(b) who called 911 in regard to the incident reported that a man with a gun was banging on the door to one of the apartments and trying to kick the door in (BR 12 and BR 13).

Though § 87(2)(b) alleged that only PO Pugliese approached his car with his gun pointed, an allegation of gun pointed was also pled against PO Calabrese as he admitted to doing so.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Any application or use of force must be reasonable under the circumstances. The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. Patrol Guide Procedure 221-01 (BR 09).

A frisk is permissible only if the police possess a particularized reasonable suspicion that the suspect is armed and may be dangerous. *People v. Russ*, 61 N.Y.2d 693, 695 (1984) (BR 10).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation I: Abuse of Authority: PO William Pugliese searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(g)
§ 87(2)(b) testified that PO Pugliese sat in the driver's seat of § 87(2)(b)'s car, opened the center console and glove compartment, and looked through them. PO Pugliese also looked under and around the seats. After five to ten minutes, he got out of the car, opened the trunk, and looked through it. The whole search lasted ten to fifteen minutes. The glove compartment and center console were still open when § 87(2)(b) got back in his car.

PO Pugliese testified that after PO Calabrese put § 87(2)(b) in the officers' car, he entered all of the doors of § 87(2)(b)'s car with his upper body and looked for a gun. He also opened the glove compartment, center console, and the trunk, but did not move anything; he did not find any contraband.

PO Calabrese testified that after he sat in the officers' car with § 87(2)(b) PO Pugliese entered the open driver's door to search for the gun. He could not recall whether PO Pugliese entered any other doors or where he looked in the vehicle.

Officers may search a vehicle without a warrant when they have probable cause to believe that evidence or contraband will be found there. *California v. Carney*, 471 US 386, 392 (1985) (BR 11).

§ 87(2)(b), § 87(2)(g)

Allegation J: Abuse of Authority: PO Joseph Calabrese refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) testified that after PO Pugliese searched, all of the officers except PO Pugliese, PO Calabrese, and the other officer who initially stopped him left the scene. PO Calabrese took § 87(2)(b) out of the officers' car, took the handcuffs off of him, and handed him his ID. § 87(2)(b) asked PO Pugliese five or six times for his badge number before PO Pugliese told him that his name was "Pug" and his badge number was 12760; § 87(2)(b) immediately wrote it down. § 87(2)(b) asked PO Calabrese for his badge number and PO Calabrese said that he would have to get that information from the precinct. The other officer

walked back to the officers' car so § 87(2)(b) walked up to the car and asked him once for his badge number but the officer did not respond.

PO Pugliese testified that the backup officers began leaving after he finished searching the car. PO Pugliese took § 87(2)(b) out of the officers' car and one of the officers took the handcuffs off of him. PO Pugliese gave him a contact card with his name and shield number and explained that there had been a call about a gun a few blocks away and his vehicle fit the description. § 87(2)(b) went back to his vehicle to get a pen and paper then wrote down both PO Pugliese's and PO Calabrese's names and shield numbers. PO Pugliese could not recall there being an officer who appears Indian on the scene but he did not know all of the officers who responded. He could not see if § 87(2)(b) had any interaction with any backup officers because he was searching the car when they were on the scene.

PO Calabrese testified that when the backup officers started to leave, he took § 87(2)(b) out of the officers' car and removed his handcuffs. PO Pugliese gave § 87(2)(b) a contact card and then § 87(2)(b) went to his car to get a pen and paper. § 87(2)(b) wrote down PO Pugliese's and PO Calabrese's names and shield numbers. Only PO Calabrese and PO Pugliese ever had any interaction with § 87(2)(b). PO Calabrese could not recall whether any officers were still on the scene when § 87(2)(b) asked for the officers' information, but PO Calabrese did not see him ask any other officers for their information.

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date